

Statement by Senator Tom Coburn, MD, Ranking Member

Hearing: Eliminating and Recovering Improper Payments

March 29, 2007

U.S. Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security

INTRODUCTION

I want to commend OMB and Linda Combs in particular for their efforts to tackle the problem of payment errors. Ms. Combs, your efforts have been Herculean and I appreciate your work. We may not always agree on everything, but I can't thank you enough for how well your office has worked with this subcommittee. It has been a model for how the legislative and executive branches *ought* to work together to do the very best for the American people.

I also want to thank GAO, particularly Comptroller General David Walker and Mr. Williams, who is with us today. As new Members and their staffs come into the Congress, we would be infinitely less effective on technical issues such as today's topic without the hand-holding and painstaking analysis you all provide us.

CONTEXT

As we embark on our fifth hearing on improper payments in the past two years, let's review the nation's fiscal outlook.

- The national debt stands at \$8.8 trillion.
- Medicare and Social Security are likely to bankrupt for our children and certainly for our grandchildren.
- Congressional restraint has not improved since the elections – “exhibit A” is that the House recently passed an emergency war spending bill, but not before saddling this \$100 billion spending with \$20 billion more of pork and carve-outs for special interests such as spinach and peanut storage.

PROGRESS ON PAYMENT ERRORS

That's the big picture. Let's look at today's part of that picture - payment errors.

The Improper Payments Information Act of 2002 requires the following:

- Perform a risk assessment to determine whether or not programs and activities are susceptible to making “significant improper payments,” (defined by OMB as program where at least 2.5% of all payments are improper AND the absolute dollar figure associated with that 2.5% or more totals at least \$10M.)
- Develop a statistically valid estimate of improper payments for all programs and activities identified as susceptible to significant improper payments in the risk assessment.
- Develop a corrective action plan for all programs where the statistical estimate exceeds \$10 million in annual improper payments, The remediation plan must contain annual targets for reducing improper payment levels.

Statement by Senator Tom Coburn, MD, Ranking Member

- Report the results of IPIA activities on an annual basis to Congress, and in the DHS Performance and Accountability Report.

So that's what the law requires. Where are we?

- In the third year of IPIA reporting, only 18 of the 36 agencies have reported even *reviewing* all programs and activities as part of the risk assessment process.
- In other words, only **half** of all federal agencies have completed their required risk assessment.
- Twelve agencies provided enough details that indicated *some* level of review.
- Another six agencies have yet to report **ANY** information on their risk assessment.
- We have also made little progress in finding a proven, reliable methodology to determine accurate risk assessment data.
 - Some agencies still use non-statistical sampling, while others use single audits to identify risk assessments. Others, including witnesses today, are incorrectly claiming that their recovery audits are valid proxies for the statutorily required statistically valid risk assessment.
 - Both methods lack the depth and detail required to determine adequate risk assessments.

So how does this status translate into dollars?

This year, the government-wide improper payment estimate totaled \$42 billion, up from \$38 billion last year. Yet, given that only **HALF** of the agencies have provided complete risk assessments and that there is a lack of consensus on the methodology used to determine improper payment estimates, we're still in the dark when it comes to understanding the total magnitude of the problem.

RECENT DEVELOPMENTS

One of the more troubling discoveries this year is the fact that OMB revised IPIA implementing guidance in a way that is fundamentally at odds with the law and Congressional intent.

Despite the overwhelming evidence that we're not yet properly identifying risk-susceptible programs, the revised guidance lightens the burden and allows for agencies to perform risk assessments every *3 years* for those programs not deemed susceptible to significant improper payments.

This is alarming for several reasons. First, the IPIA is still in its infancy. GAO reported that for fiscal years 2004 through 2006, "some agencies still had not instituted systemic methods of reviewing all programs and activities or had not identified all programs susceptible to significant improper payments." GAO also reported further that "agencies employ different sampling methodologies to estimate improper payments and certain agencies risk assessments appear questionable." These facts suggest that there's not a consensus that we've got the risk assessment process well-in-hand enough to go easier on agencies in risk assessment.

Statement by Senator Tom Coburn, MD, Ranking Member

For instance:

- In 2005, the Department of Agriculture's Marketing Assistance Loan Program had an error rate of 0.7%. This year, it skyrocketed to 20.3%.
- Another example is the Department of State's International Information Program-US Speaker and Specialist Program. In 2005, the improper payment estimate totaled \$1.9 million, with an error rate of 81.2%. In 2006, the error rate dropped to 23.8%, HOWEVER, the improper payment amount *tripled* to \$6.7 million.

I don't think we need to spend energy *weakening* the law and figuring out which programs should be *exempt* from annual risk assessments until a consistent, statistically valid method is established government-wide to identify payment errors.

RECOVERY AUDITS

I am encouraged by the potential that recovery audits can bring to the problem of payment errors. A provision in the National Defense Authorization Act for FY 2002 requires that agencies that enter into contracts in total excess of \$500 million in a fiscal year must carry out a cost-effective program for identifying and recovering amounts erroneously paid to contractors. Recovery audits are a win-win. First, they recapture lost payments. In Fiscal Year 2006, \$256 million was recaptured.

Unfortunately, that's only about a third of the amount that was identified as needing to be recovered. But the amount we're talking about here isn't even a billion dollars. With payment mistakes totaling over \$40 billion, we need to do more than just recover a billion, which is why the second benefit of recovery audits is so useful.

These audits help us determine weaknesses in our financial systems responsible for the payment errors in the first place. Agencies should pay close attention to the recovery audit reports as they provide useful insights about where their vulnerabilities exist and what effective internal controls can be implemented for prevention.

I do want to note however, that recovery audits are only required on contracts larger than \$500 million. They are also generally retrospective beyond the most recently ended fiscal year. In other words, under no circumstances can they serve as legal "proxies" for the statutorily required statistically valid risk assessments for the sake of estimating likely rates of payment errors for agency estimates for previous fiscal years. I am dismayed that some agencies seem to be in error on this point.

Ultimately, transparency and risk assessment data are only the beginning of accountability, not the end. We can conduct oversight hearings until we all turn blue in the face. Exposing the true scope of the problem has been hard enough, and we're still not there with any sort of methodological rigor.

LACK OF POLITICAL WILL

Statement by Senator Tom Coburn, MD, Ranking Member

However, even if we were, it grieves me that so far, this Congress has not had the political will to address the problems that *have* been exposed. I have offered numerous amendments to bills in the past 2 years to address payment errors and most of them have failed.

Things are different here in Washington. If an employee at a private firm made a major payment error, he would probably face disciplinary action, and might even be fired or forced to pay for the lost funds. But if a government official makes a major payment error, or oversees a program which routinely makes payment errors, there is a strong possibility he would face few consequences, and that's assuming that the mistake were even discovered.

Much of our Federal spending is too incoherent to be audited, much less pass an audit. If Members of Congress had to vouch for the integrity of our financial statements the way we require private firms to do under Sarbanes-Oxley requirements, we'd either have to admit we couldn't do it, or else go to jail for deceiving the public.

Although progress has been made by this President, and he inherited the accumulated mess of decades of out-of-control government growth, *still*, the status quo is shameful. I hope that *this* Congress will be the Congress that finally finds the courage to bring the painful, but necessary accountability to address this problem.

I want to thank our witnesses for coming today.